

(1) A chronic dust disease of the lung arising out of employment in the Nation's coal mines, and includes coal workers' pneumoconiosis, anthraco-silicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silico-tuberculosis, arising out of such employment. For purposes of this subpart, the term also includes the following conditions that may be the basis for application of the statutory presumption of disability or death due to pneumoconiosis under the circumstances prescribed in section 411 (c) of the Act;

(2) Any other chronic respiratory or pulmonary impairment when the conditions are met for the application of the presumption described in §410.414(b) or §410.454(b), and

(3) Any respirable disease when the conditions are met for the application of the presumption described in §410.462. The provisions for determining that a miner is or was totally disabled due to pneumoconiosis or its sequelae are included in §§410.410 through 410.430 and in the appendix following this subpart D. The provisions for determining that a miner's death was due to pneumoconiosis are included in §§410.450 through 410.462. Certain related provisions of general application are included in §§410.470 through 410.476.

(c) *Relation to the Social Security Act.* Section 402(f) of the Act, as amended, 30 U.S.C. 902(f), provides that regulations defining total disability "shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act." Section 413(b) of the Act, 30 U.S.C. 923(b), also provides, in pertinent part, that in "carrying out the provisions of this part [that is, part B of title IV of the Act], the Commissioner shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the \* \* \* procedures he uses in determining entitlement to disability insurance benefits under section 223 of the Social Security Act \* \* \*."

[37 FR 20641, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

**§410.410 Total disability due to pneumoconiosis, including statutory presumption.**

(a) Benefits are provided under the Act to coal miners "who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines," and to the eligible survivors of miners who are determined to have been totally disabled due to pneumoconiosis at the time of their death. (For benefits to the eligible survivors of miners whose deaths are determined to have been due to pneumoconiosis, see §410.450.)

(b) To establish entitlement to benefits on the basis of a coal miner's total disability due to pneumoconiosis, a claimant must submit the evidence necessary to establish: (1) That he is a coal miner, that he is totally disabled due to pneumoconiosis, and that his pneumoconiosis arose out of employment in the Nation's coal mines; or (2) that the deceased individual was a miner, that he was totally disabled due to pneumoconiosis at the time of his death, and that his pneumoconiosis arose out of employment in the Nation's coal mines.

(c) Total disability is defined in §410.412; the basic provision on determining the existence of pneumoconiosis is in §410.414; and the requirement that the pneumoconiosis must have arisen out of coal mine employment is in §410.416. The statutory presumptions with respect to the burden of proving the foregoing are in §§410.414(b), 410.416(a), and 410.418, and the provision for determining the existence of total disability when the presumption in §410.418 does not apply is included in §410.422.

**§410.412 "Total disability" defined.**

(a) A miner shall be considered totally disabled due to pneumoconiosis if:

(1) His pneumoconiosis prevents him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work"; see §§410.424 through 410.426); and